

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID ROBERT TAYLOR,

Defendant-Appellant.

UNPUBLISHED

June 13, 2006

No. 261722

Wayne Circuit Court

LC No. 04-012069-01

Before: Davis, P.J., and Sawyer and Schuette, JJ.

PER CURIAM.

Defendant was convicted at a bench trial of assault with intent to rob while armed, MCL 750.89, attempted car jacking, MCL 750.82 and MCL 750.529a. For those respective convictions he was sentenced as a fourth felony offender, MCL 769.12, to concurrent terms of twelve to twenty years' imprisonment and three to five years' imprisonment. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On November 7, 2004, the victim left his job and traveled to a gas station to get coffee while on his break at 2:00 A.M. When he got out of his car at the gas station, defendant approached him and demanded his keys and his car. Defendant swung at the victim with a ten-inch ice pick or screwdriver. Defendant also demanded the victim's wallet. They fought briefly before the victim was able to get away and enter the gas station. Defendant entered a waiting van being driven by a friend and drove away. A bystander who witnessed the incident followed the van and obtained the license plate number.

Both the driver of the van and the bystander testified that they saw defendant swing a screwdriver or ice pick at the victim and wrestle with him on the ground, eventually pulling the victim's shirt up over his head.

Defendant gave a statement to the police after he was arrested in which he stated that he and a friend were trying to buy crack cocaine. Defendant thought he saw a "dope boy" at the gas station and intended to either get the cocaine on credit or rob the drug dealer. Defendant told the officer that the victim said something nasty to him and that they fought. According to the officer, defendant said that he had told the victim that "I'll get into your pockets".

Defendant testified on his own behalf at trial. He generally agreed with the statement he had given to the police, but denied saying anything about robbing the drug dealer or getting into the victim's pockets. He testified that the victim sprang at him as he walked past the victim's car, and that the victim asked him to perform a sex act for money. Defendant admitted wielding a screwdriver, but denied swinging it at the victim or trying to rob him.

The prosecutor attempted to impeach defendant with his prior record. However, the trial court did not allow defendant's prior record to be entered into evidence.

Defendant argues that the trial court erred in bypassing the prosecutor for closing argument and asking defense counsel to give "one good reason why I should not convict your client as charged." Defendant claims that by doing so, the trial court shifted the burden of proof onto him to prove his innocence. Defendant also argues the trial court impermissibly surmised what he might have done when asked to perform sex for money when he was seeking money for drugs. Finally, defendant claims the court erroneously considered his prior criminal record in its ruling. Defendant made no objections to any of these allegations of error in the trial court.

To preserve an issue for review, a party must object below. In this case, defendant did not object at trial to any of the issues complained of on appeal. Therefore, the issues are not preserved for appeal. *People v Dowdy*, 211 Mich App 562, 570; 536 NW2d 794 (1995).

This Court reviews an unpreserved issue for plain error under *People v Carines*, 460 Mich 750; 597 NW2d 130 (1999). The *Carines* standard requires that three requirements be met: 1) error must have occurred, 2) the error must be plain, i.e., clear and obvious, and 3) the plain error must have affected the defendant's substantial rights. The third requirement requires some showing of prejudice. *Id.* at 774; *People v Wilson*, 265 Mich App 386, 389; 695 NW2d 351 (2005).

The prosecutor has the burden in a criminal case to prove beyond a reasonable doubt the essential elements of a crime. The prosecutor must offer enough evidence for the reviewing court to conclude that a rational trier of fact could have found that the essential elements of the crime were established beyond a reasonable doubt. Circumstantial evidence and reasonable inferences drawn from it may be sufficient. *People v Jolly*, 442 Mich 458, 465-466; 502 NW2d 177 (1993).

In this case, the victim and two other witnesses testified to the assault. Defendant himself admitted to the physical altercation and to having a screwdriver that he produced at the scene. The victim testified that defendant tried to rob him of his car, car keys, and wallet. The trial court explicitly stated that it believed the victim's explanation of the events over defendant's. Moreover, the record does not support defendant's claim that the trial court considered his prior criminal record. In fact, the trial court specifically ruled that defendant's record was not admissible into evidence. Further, the court made no reference to defendant's criminal history in ruling on evidence. Also, the trial court's comments about exchanging sex for money were made in the context of determining the believability of defendant's testimony that the victim jumped out at defendant and propositioned him sexually, as defendant testified. The evidence showed that defendant was in search of money for drugs. The officer testified that defendant admitted to a plan to rob the drug dealer if that became necessary. The court's comments were merely a reflection on defendant's own statement and testimony. Finally, as to the alleged shifting of the

burden of proof, the trial court's comment, when taken in context, was simply an attempt to expedite the proceedings. That is, the evidence against defendant was substantial and the court did not feel it was necessary for the prosecution to review the proofs and relate the evidence to the elements of the crimes in order to support findings of guilt. Instead, the court desired to skip directly to defendant's closing argument. That did not amount to a shifting of the burden of proof.

Since the trial court did not commit error, the first requirement under *Carines, supra*, has not been met. Without the first element of error, the other two elements – whether the error was plain and whether defendant's substantial rights were affected – need not be considered.

Affirmed.

/s/ Alton T. Davis
/s/ David H. Sawyer
/s/ Bill Schuette